



IP Communications

ORIGINAL

January 31, 2000

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554


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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re. Application of SBC Communications Inc. Pursuant to Section 271 of the
Telecommunications Act of 1996 to provide In-Region, InterLATA services in Texas, CC
Docket No 00-4

Dear Ms. Salas,

Enclosed for filing is IP Communications Affidavit in Docket No. 00-4.

Sincerely,


Sean Minter

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by SBC Communications,)
Inc., Southwestern Bell Telephone)
Company, and Southwestern Bell)
Communications Services, Inc. d/b/a)
Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)
_____)

CC Docket No. 00-4

**DECLARATION OF SEAN MINTER
ON BEHALF OF IP COMMUNICATIONS CORPORATION**

Based on my personal knowledge and on information learned in the course of my business duties, I, Sean Minter, declare as follows:

Qualifications

1. My name is Sean Minter. I am the President and Chief Operating Officer of IP Communications Corporation (IPC). IPC is an innovative provider of high-speed telecommunications services including digital subscriber line (DSL). In my present position, I have the overall responsibility of developing IPC's corporate strategy and implementation. In this position, I participated in the collaborative process of the Texas Public Utility Commission's (TPUC) Section 271 proceeding (Project No. 16251). In addition to my corporate responsibilities for IPC, I also participated as a consultant on behalf of AT&T during much of Project No. 16251 and Project No. 20000 (the Operation Support Systems testing project). In this declaration, I only address issues relating to SWBT's market readiness as it affects the ability of IPC to provide DSL services to Texas consumers. Prior to assuming my current responsibilities, I was closely involved in the negotiations and arbitrations relating to AT&T's

interconnection agreements with SWBT in Texas, Arkansas, Kansas, Missouri, and Oklahoma. I have also file written testimony on OSS, UNEs, and Performance Measures in 271 proceedings in Texas, Missouri, Kansas, Oklahoma and Arkansas.

Purpose of Declaration

2. The purpose of my declaration is to point out issues that demonstrate that SWBT is not currently providing competitors with timely and nondiscriminatory access to loops capable of functioning with DSL technology. Moreover, SWBT may be six months or more away from fully implementing many of the DSL obligations set forth in the Commission's SBC/Ameritech Merger Order¹, the TPUC's DSL Arbitration Award of November 30, 1999,² and other FCC orders.

Certain Basic Requirements to Irreversibly Open Markets to DSL Competition

3. For a DSL competitive local exchange carriers (DLECs) to have a reasonable opportunity to compete, certain basic needs must be met. Without developing an exhaustive list, this declaration will point out certain glaring deficiencies that can delay the development of DSL competition. The deficiencies discussed include the inability of DSL CLECs to currently order the spectrum of a loop being used by SWBT to provide voice services in the same way SWBT's DSL affiliate does. The inability of DLECs to order a loop and port

¹In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order").

²Petition of Rhythms Links, Inc. For Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company; Petition of Dieca Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Southwestern Bell Telephone Company, Arbitration Award, Public Utility Commission of Texas, Docket Nos. 20226 and 20272 (Nov. 30, 1999) ("DSL Arbitration Award") (attached hereto as Exh. 1). The Award was recently approved (with minor modifications) by the TPUC. In doing so, the TPUC found that SWBT's current methods, procedures and rates do not comply with FTA § 251.

combination to allow the DLEC to provide both voice and data (using its own facilities) over the same unbundled loop just as SWBT provides both voice and data to its end users today. The inability to obtain loop make-up information at intervals that are timely from a commercial perspective. The failure of SWBT to currently provide Operation Support Systems (OSSs) required pursuant to FTA § 251. The failure of SWBT to provide methods and procedures that are at parity with its retail operations..

4. **Line Sharing.** Line sharing is critical to making high-speed services broadly available to consumers, particularly residential customers.³ IPC is dedicated to bring such high speed services bundled with competitive voice services to residential customers not only in Tier 1 cities but to 90% of the State of Texas.. Line sharing is critical to implementing that strategy. SWBT admits that it currently lacks the existing capability to comply with the line sharing requirements set forth in the Line Sharing Order. See SWBT 271 Brief at 44; Affidavit of Michael C. Auinbauh at ¶ 86. Until SWBT demonstrates that it has fully implemented all line sharing requirements, its section 271 application should not be approved. On January 27, 2000, SBC, on behalf of SWBT and other incumbent LEC affiliates, hosted the initial meeting of its line sharing trial. IPC is very concerned about the things that were stated by SWBT during that meeting. SWBT stated that it intended on only trialing one method of line sharing. SWBT's preferred method of line sharing is a scenario in which the CLEC owns the splitter. IPC is very concerned with SWBT's proposal as it would require IPC to give SWBT unfettered access to its collocation and make IPC liable for SWBT's voice service. IPC proposed a scenario in which SWBT owned the splitter and provided it to the CLEC as a UNE. SWBT was very resistant to this scenario possibly because its DSL Affiliate has a splitter built into its DSLAM and this scenario would require a change in process for its Affiliate. IPC is hopeful that that trial will

³ . The Commission made a similar determination in its Line Sharing Order. In that order, it found that the absence of line sharing, "diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small business users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings." Line Sharing Order at ¶ 5.

provide meaningful information relating to architecture, preorder, ordering, provisioning, billing, and maintenance and repair. However based on the discussions at the trial meeting, it was clear that SWBT wanted to only trial one method of line sharing which is not IPCs preferred method. If SWBT is successful in its objective, IPCs business plans will be significantly affected and its ability to negotiate another method of line sharing will be hampered. Until the major structural reforms necessary to provide line sharing are implemented and demonstrated to meet the reasonable opportunity to compete standard in practice, section 271 relief is inappropriate because high-speed competitive markets are not irreversibly open.⁴ Moreover, if high-speed competition is impaired, through unbundling, an unfair competitive advantage in high-speed services can be leveraged to impair competition in local voice services. Finally on this point, the FCC found in the Bell Atlantic Order that the requirements of the Line Sharing Order should not be applied to Bell Atlantic because the Bell Atlantic New York section 271 application was filed prior to the effective date of that order. Although the SWBT Texas application was filed prior to the effective date of the Line Sharing Order as well, that precedent should not be applied to SWBT in Texas given the findings of discovery abuse in the Texas DSL Arbitration that likely delayed the state Arbitrators' ruling requiring line sharing in Texas.

5. IP Communications Requests to provide Voice and Data to a Customer using UNE-P for voice and its own facilities for Data have been Rejected. To prevent SWBT from having a competitive advantage over IPC, IPC intends to provide both the voice and data to an end user customer over the same loop just as SWBT does today. IPC would like to order from SWBT a loop and port combination that is terminated at the IPC collocation cage where IPC will provide the splitter and have pre-wired the loop and port connection so the end user should never loose his or her voice service. IPC would then be able to offer a

⁴ The interim line-sharing discount does not protect the development of competition until line sharing is implemented. The benefits of line sharing are not limited to price. Other benefits include greater loop availability, less fieldwork, and faster provisioning intervals.

competitive voice service bundled with DSL to its end user. IPC has met with SWBT several times and its requests to provide this capability to an end user over his or her existing loop has been denied. IP Communications met with SWBT at its Local Service Center and discussed this issue on December 6, 1999 and SWBT stated it did not currently support such orders from CLECs. On December 22, 1999 IPC met with SWBT at its Local Operations Center and was told the same thing. IPC place orders for four lines to be provisioned through this scenario on January 18, 2000 and they were rejected by SWBT on January 19, 2000. There have been several exchanges with SWBT's account manager and SWBT has proposed to IPC a method to accomplish its goals. This method is for IPC to place three separate orders. One order to install a new loop to the IPC Collocation, one order to install a new port to the IPC Collocation and finally a change order to modify the loop to be DSL Capable. In this scenario, the end user clearly would be out of service for an extended period of time and there is a large possibility that with the interaction of three orders that the end user experience would not be equal to the end user experience when SWBT provides the same service. IPC has ordered several SWBT retail voice and data lines and SWBT has installed all of these lines over the existing loop and with minimal service interruption. This is clearly the same goal that IPC would strive to meet but would be unable to because of the process that SWBT has put into place.

SBC clearly stated during its line sharing meeting that it does not intend to trial this scenario as part of its line sharing test even though this is not technically line sharing since IPC is both the voice and data provider. It is clear that SBC does not intend to dedicate the resources to assure that such arrangements will be able to be commercially available to DLECs even though it is providing this service to end users. Finally, IPC urges the Commission to recognize the distinction between such fundamental market reforms such as those in its Line Sharing Order and the TPUC's DSL arbitration and incremental revisions to section 251 standards. While it may be appropriate to give a Regional Bell Operating Company (RBOC) the benefit of the doubt on the latter to avoid having an ever changing standard, fundamental market reforms such as those contained in those proceedings are not evolutionary in nature, they create the initial framework to

allow competition to take root. For such fundamental changes, prior implementation should precede 271 relief because a reasonable opportunity to compete was not established in the first instance. And, without the 271 relief carrot, may be substantially delayed.

6. **Loop Make-up Information.** SWBT is not currently providing competitors with real-time electronic access to adequate loop make-up information and is many months away from developing and implementing this capability, if at all.⁵ In the meantime, competitors are forced to rely on SWBT's manual processes to obtain most loop make-up information, significantly delaying their ability to provide DSL-based services to their customers. This is not at parity with SWBT's retail operations.

7. SWBT designed its system in a manner that favors its retail operations. Rather than provide actual loop make-up information, it currently provides "green", "yellow" and "red" indicators which, by design, provide valuable loop information for SWBT's retail service representatives because the indicators effectively sync up with SWBT's retail offerings. However, these indicators are less valuable to many DLEC service offerings. Consequently, the provision of mechanized loop make-up information is not an incremental obligation but a cure to balance the playing field. Moreover, this is not a concern that is addressed by the merger condition requirement that will require SWBT to separate its retail DSL services to a separate affiliate since the mere use of the same OSSs will not assure parity when the OSSs are tailored to be most useful in conjunction with the retail offerings of the DSL affiliate.⁶ Instead, only the

⁵ SBC's Plan of Record meetings to date have not shown any willingness of SBC to expand the availability of loop make-up information to central offices beyond those currently contained in its databases.

⁶ Also, it is not clear how the structural separation of the DSL affiliate that requires that affiliate to use the same OSSs as CLECs applies to SWBT's Internet Service Provider (ISP) affiliate. Although not explicit in the merger conditions, one would assume that for parity to exist, the ISP affiliate cannot have access to OSSs any greater than other ISPs that do not have interconnection agreements with SWBT and therefore do not have electronic access to any loop information, not even the color indicators. It should be noted that Paragraph 19 of the SBC/Ameritech Merger Conditions states that "SBC/Ameritech shall provide unaffiliated telecommunications carriers with non-discriminatory access to the same local loop information for the deployment of xDSL and Advanced Services that is

availability of unfiltered loop make-up information at the same electronic speed as the availability of the “green”, “yellow” and “red” indicators can assure parity in this area.⁷


8. **Parity with Retail Operations.** For markets to be irreversibly open to competition, safeguards are necessary to assure that when markets are open they remain open. As such certain conditions should be built into section 271 approval once such approval becomes ripe. First, safeguards need to be in place to assure that equipment purchasing decisions are not biased by SWBT having a DSL-affiliate. For example, if equipment is developed that eliminates the need for a CLEC to collocate in a remote terminal to serve a customer on integrated digital loop carrier, SWBT should not be able to make the business decision to not place such equipment in its network if its DSL wholesale customers seek such a method of reaching those customers simply because its DSL affiliate is less interested after collocating in a number of remote terminals. Second, SBC policy formulation needs to be separate and distinct from its DSL affiliate. In other words, safeguards need to exist to assure that wholesale functions take into account the full range of the DSL marketplace to be assured that wholesale decisions, no matter how inadvertent, do not have a discriminatory affect. This safeguard could be achieved through collaborative decision-making or some other mechanism, but whatever the mechanism, something should be in place.

9. This concludes my declaration on behalf of IP Communications Corporation.

available to SBC/Ameritech’s retail operations, including the retail operations that will be part of the separate Advanced Services affiliate(s) described in Section I.” Although not explicit, this language would appear to be applicable to the retail operations of SWBT’s ISP affiliate.

⁷ The type of information made available in the manual process that needs to be available in the mechanized process includes: (1) the actual length (as opposed to theoretical loop length) of the loop; (2) the location and length of bridged taps and number of load coils; (3) the loop wire gauge; (4) spectrum management information; and (5) the presence of digital loop carriers, repeaters, Digital Added Main Lines (“DAML”), and pair gain devices. It is also my understanding that much, if not all, of this information is presently contained in SWBT’s LFACs and LEIS databases.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Declaration on IP Communications Corporation is true and correct to the best of my knowledge and belief.



Sean Minter

Dated: January 29, 2000.